IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

RSA.No. 559 of 2006()

(AGAINST THE JUDGMENT AND DECREE IN AS.176/2003 DATED 16/03/06 ON THE FILE OF THE ADDL.SUB COURT, IRINJALAKUDA AGAINST THE JUDGMENT AND DECREE IN OS.1638/2002 AND IN THE COUNTER CLAIM IN THE SAID SUIT, DTD. 30/09/03 ON THE FILE OF THE ADDL.MUNSIFF COURT, IRINJALAKUDA)

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APPELLANT/APPELLANT/DEFENDANT:

M/S SALKARA TOURIST HOME, KATTOOR,
A PARTNERSHIP FIRM REP.BY ITS MANAGING PARTNER
T.K.GANGADARAN, AGED 75,S/O KUTTAPPU,
THANDAYAMPARAMBIL HOUSE, EDATHIRUTHY VILLAGE,
KODUNGALLUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT: RESPONDENT/PLAINTIFF:

N.S.JOSE,S/O N.J.SEBASTINE,PROPRIETOR,
NALAPPATU DIESEL, KORATTY DESOM,
MURINGOOR THEKUMURY VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.MURALI PURUSHOTHAMAN
SRI.P.M.BENZIR
SRI.DEEPU LAL MOHAN

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 559 OF 2006

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DATED THIS THE 5th DAY OF JULY, 2007

JUDGMENT

Defendant in O.S.1638 of 2002 on the file of Additional Munsiff Court, Irinjalakuda is the appellant. Plaintiff is the respondent. Appellant purchased a diesel Generator set for a total consideration of Rs.96,600/-. Out of the sale price, appellant paid only Rs.17,000/- as advance and Rs.20,000/- by way of cheque later on 11.12.1999. Even according to appellant, Rs.59,600/- is admittedly due. The suit is filed for realisation of the amount. Appellant contended that he is not liable to pay the amount and instead he is entitled to get refund of the amount paid as there is manufacturing defect in the generator set supplied by appellant. Appellant had approached the consumer forum on the same ground, but it was rejected. An appeal was filed before State Consumer Forum which happened to be dismissed for default. Appellant filed a counter claim in the suit for realisation of the amount paid.

2. Learned Munsiff on the evidence found that appellant is not entitled to the damages and instead he is liable to pay the amount demanded by respondent. The suit was decreed.

Counter claim was dismissed. Appellant challenged the decree and judgment before Sub Court, Irinjalakuda in A.S.176 of 2003. The learned Additional Sub Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff but modified the decree with regard to the rate of interest payable subsequent to the filing of the suit. The second appeal is filed challenging the said modified decree.

3. Learned counsel appearing for the appellant was heard. The argument of the learned counsel appearing for appellant was that respondent did not produce the license enabling him to manufacture the generator set sold to the appellant, in spite of the contention raised by appellant that he has no license to manufacture the generator set and as respondent is not authorised to manufacture the same, he is not entitled to realise the amount due from the appellant by sale of the generator set illegally manufactured and therefore courts below should not have granted a decree in his favour. Learned counsel also argued that courts below should have found that there was manufacturing defect in the generator set supplied to appellant as it was admitted by respondent that it was repaired once and in such circumtances, the decree and judgment are to be set

aside. Learned counsel further argued that as the suit was instituted only on 30.9.2002 and purchase was on 30.7.1999, the suit was barred by time.

4. On hearing learned counsel appearing for appellant, I do not find any substantial question of law involved in the appeal. Though the sale of generator set was on 30.7.1999, it is the case of respondent, and not denied by appellant, that out of the balance consideration after payment of advance of Rs.17000/-, Rs.20,000/- was paid on 11.12.1999. Suit was filed within three years from that day. In such circumstances, the contention that suit claim is barred by time is unsustainable.

5. As found by courts below, appellant did not file an application directing respondent to produce the license issued to respondent enabling the manufacture of generator set. Without filing such an application, even after respondent asserted at the time of cross examination that he has the license, appellant is not entitled to contend that respondent did not produce the license and therefore he is not having a license. With regard to the manufacturing defect alleged by appellant, trial court and first appellate court, on appreciation of evidence, entered a factual finding. That factual finding cannot be interfered in

exercise of the powers of this court under Section 100 of Code of Civil Procedure. No substantial question of law is involved in the appeal.

RSA is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-